

IV expenditures in the base year by eligible institution offering comparable programs of institution

the applicant institution's base year enrollment; or

Enrolled students in the base year in those same institutions

(iii) 90 percent of its current year IV allocation and 100 percent of its current year CY allocation.

(4) The Secretary divides each institution's conditional guarantee between IV and CY funds based on the percentage that the institution's request for each type of grant bears to its total request.

(c) ***

(3) As used in paragraph (d) of this section:

(i) *Average cost of attendance* means the attendance costs for undergraduate students. These costs include tuition, fees, standard living expenses, books, and supplies. (The institution reports its total tuition and fee revenues, and the Secretary uses this amount to determine the average cost of attendance.)

(ii) *Eligible students* means students who—

(A) Were enrolled as regular students on at least a half-time basis in an eligible program during the base year;

(B) Met program regulation requirements for citizenship or residency in the United States for the base year; and

(C) Applied for financial assistance for the base year, and for whom the institution has on file taxable and non-taxable income data and all the other information necessary to perform a needs analysis using a methodology approved by the Secretary;

(iii) *State Student Incentive Grants (SSIG)* means:

State's total SSIG for the base year (Federal plus match)

Institution's total undergraduate State grants for the base year.

The State's total undergraduate State grants for the base year (including the Federal SSIG allotment)

As used in this formula—

(A) "State" means the State in which the institution is located; and

(B) "State grants" means the sum of all State grants and scholarships received by undergraduate students at an institution during the base year.

(iv) *Institutional grants* means the sum of undergraduate gift aid included in determining the maintenance of effort amount under § 676.20 during the 1977-78 award year. Institutional grants shall not include student financial assistance that an institution is required by State law to provide from its own funds and is not free under any law in effect on January 1, 1979 to select the recipients or adjust the criteria by which the recipients are selected. Institutional grants shall also not include any student financial assistance that an institution contributed on behalf of the State for the SSIG Program.

3. Section 676.7 is revised to read as follows:

§ 676.7 Application appeal review.

(a) An institution may request a review of the amount of funds it is scheduled to receive at a time specified by the Secretary.

(b) A National Appeal Panel appointed by the Secretary conducts the review.

(c) Notwithstanding § 676.6 an institution may appeal the following fair share elements used in determining an institution's SEOG need:

(1) The average cost of books and supplies;

(2) The established expected family contributions;

(3) The enrollment data used to determine average tuition and fee costs; and

(4) The award year used as the base year.

(d) The Secretary and the appeal panel evaluate appeals on the basis of the following criteria and documentation required by the Secretary:

(1) The extent to which the institution can justify that the average cost of books and supplies does not accurately reflect these costs at the institution.

(2) The extent to which the institution can justify that the standard expected family contribution figures do not

accurately reflect the characteristics of the student body at the institution.

(3) The extent to which the institution can justify that the average tuition and fee costs derived from the institution's enrollment data do not accurately reflect these costs at the institution.

(4) The extent to which the institution can justify that the base year used to determine its need for SEOG funds does not accurately reflect the institution's current need for SEOG funds.

(e) In setting an award amount, the Secretary considers the appeal panel's recommendations and its reasons for the recommendations.

(f) The Secretary sets an award amount based on procedures in § 676.6 and the appeal panel's recommendations.

(20 U.S.C. 1070b-3)

4. Section 676.25 is added to read as follows:

§ 676.25 Verification of student aid applicant information.

(a) The Secretary may require a student to verify, by specified documentation, the information on which the student's SEOG award is based and may require an institution to select students to verify, by specified documentation, the information on which their awards are based.

(b) Until verification procedures are completed, the institution may disburse not more than one payment, and may, at its option, withhold all payments.

(c) Any overpayment identified in the verification process or resulting from failure to provide required documentation must be—

(1) Eliminated by adjusting subsequent awards within the award year; or

(2) Repaid by the student.

(d) The Secretary will establish and publish procedures to be used for—

(1) Selecting students for the verification process; and

(2) Verifying information.

(20 U.S.C. 1070b-2 and 1089)

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Best Interest Federal Property

Thursday
January 7, 1982

Part III

Department of Housing and Urban Development

Office of Assistant Secretary for
Housing—Federal Housing Commissioner

**Mortgage Insurance and Home
Improvement Loans; Changes in
Maximum Mortgage Amounts**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203 and 234

[Docket No. R-81-949]

Mortgage Insurance and Home Improvement Loans: Changes in Maximum Mortgage Amounts

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This rule revises single-family mortgage limits for areas where moderate- and middle-income persons have limited housing opportunities due to high prevailing housing sales prices.

DATES: Effective date: January 7, 1982.

Comments due: Comments must be received on or before March 8, 1982.

ADDRESS: Interested parties are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Comments should refer to the docket number shown above and the date of this publication. A copy of each comment submitted will be available for public examination and copying (at a charge of ten cents per page) during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

John J. Coonts, Director, Single Family Development Division, Room 9270, 451 Seventh Street, S.W., Washington, D.C. 20410 (202) 755-6720 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Sections 203(b)(2) and 234(c) of the National Housing Act (12 U.S.C. 1709(b)(2), 1715y(c)) prescribe maximum mortgage amounts for the single-family and condominium unit mortgage programs established under such provisions. By Section 336 of the Housing and Community Development Act of 1980, such sections were amended to authorize the Secretary to increase the statutory limits on an area-by-area basis as the Secretary deems necessary, after taking into consideration the extent to which moderate- and middle-income persons have limited housing opportunities in the area due to high prevailing housing sales prices.

In the case of mortgages insured under Section 203(b), the statute provided that the increased limits could

not exceed the lesser of (A) 133 1/3% of the statutory limit, or (B) 95% of the median one-family house price in the area in the case of a one-family residence, 107% of such median price in the case of two-family residence, 130% for a three-family residence, and 150% for a four-family residence.

In the case of mortgages insured under Section 234(c), the statute provided that the increased limit could not exceed the lesser of 111% of the statutory limit or 95% of the median one-family house price in the area.

The Department published an interim rule on November 18, 1980 (45 FR 76376) implementing the statutory authorization. The interim rule added a new § 203.18b and amended § 234.27 of the regulations, in each case to provide for the limit increases on an area-by-area basis. In addition, the interim rule added a new Appendix A to each of Parts 203 and 234, setting the increased limits for the areas identified therein. The primary data reference employed in the development of the new area-wide limits was the Federal Home Loan Bank Board's survey of "Terms on Conventional Home Mortgages." Geographic identification was by Standard Metropolitan Statistical Areas (SMSA) and non-SMSA state-wide areas. Interested parties who determined that the designated maximum mortgage limits did not accurately reflect the extent to which moderate- and middle-income persons had limited housing opportunities in local market areas due to high prevailing housing sales prices were invited to submit comments.

An analysis of sales data contained in some comments indicated that the "median sales price" in some areas did not adequately reflect the cost of new homes because of a preponderance of existing home sales compared to new home sales. In the Conference Report on the Omnibus Budget Reconciliation Act of 1981, the conferees further clarified the intent of the 1980 amendments in such a context. The Conference Report stated: "While the Congress intends that the concept of 'median sales price' refer to the median of the aggregated sales price of new and existing homes, in cases where the median one-family home price does not reasonably reflect the sales prices of newly constructed homes because of an existing stock whose value is static or declining, the conferees expect the Secretary to give greater weight to the sales prices of new homes in determining median sales price in such areas, so that the housing opportunities of moderate- and middle-income persons will be maximized."

In this rulemaking action, the Department is amending Appendix A to Parts 203 and 234 to establish new increased mortgage limits for the geographic areas indicated therein. In addition, 24 CFR 203.18b and 234.27 are each amended to reflect the flexibility allowed in determining "median sales price" in areas where the Commissioner determines that the composite median one-family price does not reasonably reflect the sales price of newly constructed homes because of an existing stock whose value is static or declining.

In establishing increased limits for the amended Appendices published herein for areas where evidence indicated that existing home sales outnumbered new homes sales by three-to-one or better, the "median sales price" has been calculated as the greater of (1) the average of the median sales prices for new and existing homes, and (2) the composite median price of all sales.

Separate maximum mortgage amounts are established for Section 203(b) and 234(c). The amounts for Section 203(b) are applicable also to Sections 203(k), 213, 222, 240, 244, 245(a), 245(b), 809, and 810. Mortgage limits for Section 220(d) (3)(A)(i) are also the same as for Section 203(b), with per-unit increases of \$9,165 for each unit in excess of four.

In cases where interested parties consider that the designated maximum mortgage limits do not accurately reflect the extent to which moderate- and middle-income persons have limited housing opportunities due to high prevailing housing sales prices, they may comment on the limits in their area. Comments may be submitted to the appropriate HUD Field Office for review. Information which may be helpful in making a determination would include data for new and existing home sales in the area for a recent period of time.

The Secretary has determined that prior notice and public comment are not necessary and would be contrary to the public interest and that good cause exists for making this rule effective as soon as possible. Prior public comment would cause a substantial delay in making the benefits available, which would result in unnecessary hardship to homebuyers who need to use the increased mortgage amounts which this Interim Rule provides.

For these same reasons, it is not appropriate to delay the effective date of these provisions for the 30-day period provided in 5 U.S.C. 553(d). In addition, the Chairman and Ranking Minority Members of the Senate Committee on Banking, Housing, and Urban Affairs

and the House Committee on Banking, Finance and Urban Affairs have waived the 30-day delayed effective date provided for in Section 7(o)(3) of the Department of HUD Act, 42 U.S.C. 3535(o)(3). Accordingly, this regulation is being published as an interim rule to become effective upon publication. However, the Department is soliciting comments from the public prior to issuing a final rule. All comments received prior to conclusion of the 60-day comment period will be considered by the Department in preparation of the final rule.

Pursuant to Section 605(b) of the Regulatory Flexibility Act, the undersigned certifies that the rule does not have a significant economic impact on a substantial number of small entities.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implements Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the address set forth above.

This rule was not listed in the Semiannual Agenda of Regulations published pursuant to Executive Order 12291 and the Regulatory Flexibility Act on August 17, 1981 (46 FR 41708).

The following numbers identify the program, as listed in the Catalog of Federal Domestic Assistance, affected by the regulation change.

Section 203(b)—14.117 Mortgage Insurance—Homes (F)—14.118 Mortgage Insurance—Homes for Certified Veterans (F)
Section 213—14.126 Mortgage Insurance—Management Type Cooperative Projects (F)
Section 220—14.122 Mortgage

Insurance—Homes in Urban Renewal Areas (F)

Section 221(d)(2)—14.120 Mortgage Insurance—Homes for Low and Moderate Income Families (F)
Section 222—14.133 Mortgage Insurance—Purchase of Units in Condominiums (F)
Section 240—14.130 Mortgage Insurance—Purchase by Homeowners of the Fee Simple Title by Lessors (F)
Section 244—14.161 Single Family Mortgage Coinsurance (F)
Section 245(a) and 245(b)—14.159 Section 245 Graduated Payment Mortgage Program (F)
Section 809—14.167 Mortgage Insurance—Armed Services Housing—Civilian Employees (F)
Section 810—14.168 Armed Services Housing—Impacted Areas (F)
Accordingly, Chapter II of Title 24 C.F.R. is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. Section 203.18b is amended by adding a new paragraph (c) to read as follows:

§ 203.18b Increased mortgage amount.

(c) In the case of an area where the Commissioner determines that the median one-family house price does not reasonably reflect the sales prices of newly constructed homes because of an existing stock whose value is static or declining, the Commissioner may give greater weight to the sales prices of new homes in determining median house price in such area. Without limiting the discretion of the Commissioner in fashioning appropriate methods of implementing the foregoing authority in particular circumstances based upon a demonstration of good cause satisfactory to the Commissioner, in areas where evidence satisfactory to the

Commissioner indicates that existing home sales outnumber new home sales by three-to-one or better, the "median sales price" will be calculated as the greater of (1) the average of the median sales price for new and existing homes, and (2) the composite median price of all sales.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

2. Section 234.27 is amended by adding a new paragraph (c) to read as follows:

§ 234.27 Maximum mortgage amounts.

(c) In the case of an area where the Commissioner determines that the median one-family house price does not reasonably reflect the sales prices of newly constructed homes because of an existing stock whose value is static or declining, the Commissioner may give greater weight to the sales prices of new homes in determining median house price in such area. Without limiting the discretion of the Commissioner in fashioning appropriate methods of implementing the foregoing authority in particular circumstances based upon a demonstration of good cause satisfactory to the Commissioner, in areas where evidence satisfactory to the Commissioner indicates that existing home sales outnumber new home sales by three-to-one or better, the "median sales price" will be calculated as the greater of (1) the average of the median sales price for new and existing homes, and (2) the composite median price of all sales.

PART 203—[AMENDED]

3. Part 203 is amended by revising Appendix A at the end thereof to read, in its entirety, as follows:

Appendix A to Part 203

Schedule of Section 203(b) Area-Wide One- To Four-Family Mortgage Limits

For any market area (county or part of a county) not listed in Appendix A below, the following maximum mortgage limits shall apply: \$67,500 for a one-family unit; \$76,000 for a two-family unit; \$92,000 for a three-family unit; and \$107,000 for a four-family unit.

Market area designation and local jurisdictions	Section 203(b) mortgage limits			
	1-family	2-family	3-family	4-family
REGION I				
HUD Field Office: Hartford Area Office				
Bridgeport, CT SMSA:				
Fairfield County (part)	\$70,500	\$79,500	\$96,500	\$112,000

Market area designation and local jurisdictions	Section 203(b) mortgage limits			
	1-family	2-family	3-family	4-family
Bridgeport City				
Shelton City				
Easton Town				
Fairfield Town				
Monroe Town				
Stratford Town				
Trumbull Town				
New Haven County (part)				
Derby City				
Milford City				
Bristol, CT SMSA:				
Hartford County (part)	71,000	80,000	97,000	113,000
Bristol City				
Burlington Town				
Litchfield County				
Plymouth Town				
Danbury, CT SMSA:				
Fairfield County (part)	80,000	90,000	109,000	127,000
Danbury City				
Bethel Town				
Brookfield Town				
New Fairfield Town				
Newtown Town				
Redding Town				
Litchfield County (part)				
New Milford Town				
Hartford, CT SMSA:				
Hartford County (part)	68,000	77,000	93,000	108,000
Hartford City				
Avon Town				
Bloomfield Town				
Canton Town				
East Granby Town				
East Hartford Town				
East Windsor Town				
Enfield Town				
Farmington Town				
Glastonbury Town				
Granby Town				
Manchester Town				
Marlborough Town				
Newington Town				
Rocky Hill Town				
Simsbury Town				
South Windsor Town				
Suffield Town				
West Hartford Town				
Wethersfield Town				
Windsor Town				
Windsor Locks Town				
Litchfield County (part)				
New Hartford Town				
Middlesex County (part)				
Cromwell Town				
East Hampton Town				
Portland Town				
New London County				
Colchester Town				
Tolland County (part)				
Andover Town				
Bolton Town				
Columbia Town				
Coventry Town				
Ellington Town				
Hebron Town				
Stafford Town				
Tolland Town				
Vernon Town				
Willington Town				
Norwalk, CT SMSA:				
Fairfield County (part)	90,000	101,300	122,650	142,650
Norwalk City				
Weston Town				
Westport Town				
Wilton Town				
Stamford, CT SMSA:				
Fairfield County (part)	90,000	101,300	122,650	142,650
Stamford City				
Darien Town				
Greenwich Town				
New Canaan Town				
REGION II				
HUD Field Office: New York Area Office				
New York and Nassau-Suffolk, NY SMSAS (combined):				
Bronx County	\$72,000	\$81,000	\$98,500	\$114,500

Market area designation and local jurisdictions	Section 203(b) mortgage limits			
	1-family	2-family	3-family	4-family
Kings County Nassau County New York County Putnam County Queens County Richmond County Rockland County Suffolk County Westchester County				
HUD Field Office: Newark Area Office				
State of New Jersey—northern metro areas:				
Bergen County	\$83,500	\$94,000	\$113,500	\$132,000
Essex County				
Hudson County				
Middlesex County				
Monmouth County				
Morris County				
Passaic County				
Somerset County				
Union County				
HUD Field Office: Camden Service Office				
Atlantic City, NJ SMSA: Atlantic County	\$89,000	\$100,000	\$121,000	\$141,000
Trenton, NJ SMSA: Mercer County	68,500	77,000	93,500	108,000
REGION III				
HUD Field Office: Washington, DC Area Office				
Washington, DC-MD-VA SMSA:				
District of Columbia	\$89,500	\$100,500	\$122,000	\$141,500
Montgomery County, MD				
Prince Georges County, MD				
Alexandria City, VA				
Fairfax City, VA				
Fairfax County, VA				
Falls Church City, VA				
Manassas City, VA				
Manassas Park City, VA				
Arlington County, VA				
Loudoun County, VA				
Prince William County, VA				
HUD Field Office: Baltimore Area Office				
Washington, DC-MD-VA SMSA: Charles County	\$89,500	\$100,500	\$122,000	\$141,500
Baltimore, MD SMSA (part):				
Howard County	78,500	88,000	107,000	124,000
Anne Arundel County				
HUD Field Office: Richmond Area Office				
Newport News-Hampton and Norfolk-VA Beach-Portsmouth, VA SMSA (combined):				
Chesapeake City	\$76,500	\$86,000	\$104,500	\$120,500
Hampton City				
Newport News City				
Norfolk City				
Poquoson City				
Portsmouth City				
Suffolk City				
Virginia Beach City				
Williamsburg City				
Gloucester County				
James City County				
York County				
REGION IV				
HUD Field Office: Greensboro Area Office				
Newport News-Hampton and Norfolk-VA Beach-Portsmouth, VA SMSA:				
Currituck County	\$76,500	\$86,000	\$104,500	\$120,500
HUD Field Office: Columbia Area Office				
Charleston-North Charleston, SC SMSA:				
Berkeley County	\$80,500	\$90,500	\$110,000	\$127,500
Charleston County				
Dorchester County				
HUD Field Office: Atlanta Area Office				
Atlanta, GA SMSA:				
Butts County	\$78,500	\$88,500	\$107,000	\$124,500

Market area designation and local jurisdictions	Section 203(b) mortgage limits			
	1-family	2-family	3-family	4-family
Cherokee County Clayton County Cobb County De Kalb County Douglas County Fayette County Forsyth County Fulton County Gwinnett County Henry County Newton County Paulding County Rockdale County Walton County				
HUD Field Office: Birmingham Area Office				
Mobile, AL SMSA: Baldwin County	\$75,000	\$84,000	\$102,500	\$118,000
Mobile County				
Montgomery, AL SMSA: Autauga County	75,000	84,000	102,500	118,000
Elmore County				
Montgomery County				
HUD Field Office: Memphis Service Office				
Memphis, TN-AR-MS SMSA: Shelby County	\$75,000	\$84,000	\$102,500	\$118,000
Tipton County				
HUD Field Office: Jackson Area Office				
Memphis, TN-AR-MS SMSA: De Soto County	\$75,000	\$84,000	\$102,500	\$118,000
HUD Field Office: Coral Gables Service Office				
Ft. Lauderdale-Hollywood, FL SMSA: Broward County	\$72,500	\$81,500	\$98,500	\$115,000
Miami, FL SMSA: Dade County	71,500	80,500	97,500	113,500
West Palm Beach-Boca Raton, FL SMSA: Palm Beach County	73,500	82,500	100,000	115,500
REGION V				
HUD Field Office: Minneapolis-St. Paul Area Office				
Minneapolis-St. Paul, MN SMSA: Anoka County	\$74,000	\$83,000	\$101,000	\$117,500
Carver County				
Chisago County				
Dakota County				
Hennepin County				
Ramsey County				
Scott County				
Washington County				
Wright County				
St. Cloud, MN SMSA: Benton County	68,500	77,000	93,500	108,500
Sherburne County				
Stearns County				
HUD Field Office: Milwaukee Area Office				
Minneapolis-St. Paul, MN SMSA: St. Croix County	\$74,000	\$83,000	\$101,000	\$117,500
Milwaukee, WI SMSA: Milwaukee County	73,500	83,000	100,500	116,500
Ozaukee County				
Washington County				
Waukesha County				
HUD Field Office: Chicago Area Office				
Chicago, IL SMSA: Cook County	\$82,000	\$92,000	\$111,500	\$129,500
DuPage County				
Kane County				
Lake County				
McHenry County				
Will County				
HUD Field Office: Detroit Area Office				
Detroit, MI SMSA: Lapeer County	\$69,500	\$83,500	\$101,500	\$118,000

Market area designation and local jurisdictions	Section 203(b) mortgage limits			
	1-family	2-family	3-family	4-family
Livingston County Macomb County Oakland County St. Clair County Wayne County				
HUD Field Office: Columbus Area Office				
Cleveland, OH SMSA: Cuyahoga County Geauga County Lake County Medina County	\$70,500	\$79,000	\$96,000	\$111,500
REGION VI				
HUD Field Office: Dallas Area Office				
Dallas-Ft. Worth, TX SMSA: Collin County Dallas County Denton County Ellis County Kaufman County Rockwall County	\$95,000	\$95,500	\$115,500	\$134,500
Sherman-Denison, TX SMSA: Grayson County	78,000	86,000	106,500	124,000
HUD Field Office: Fort Worth Service Office				
Dallas-Ft. Worth, TX SMSA: Hood County Johnson County Parker County Tarrant County Wise County	\$85,000	\$95,500	\$115,500	\$134,500
HUD Field Office: Houston Service Office				
Houston, TX SMSA: Brazoria County Ft. Bend County Harris County Liberty County Montgomery County Waller County	\$69,500	\$78,000	\$95,000	\$110,500
HUD Field Office: Lubbock Service Office				
Amarillo, TX SMSA: Potter County Randall County	\$68,500	\$77,000	\$93,500	\$108,500
Lubbock, TX SMSA: Lubbock County	70,000	78,500	95,500	110,500
Midland, TX SMSA: Midland County	70,000	78,500	95,500	110,500
HUD Field Office: San Antonio Area Office				
Austin and San Antonio, TX SMSAS (combined): Bexar County Comal County Guadalupe County Hays County Travis County Williamson County	\$69,500	\$78,500	\$95,500	\$110,000
Corpus Christi, TX SMSA: Nueces County San Patricio County	70,000	78,500	95,500	110,500
HUD Field Office: Little Rock Area Office				
Memphis, TN-AR-MS SMSA: Crittenden County	\$75,000	\$84,000	\$102,500	\$118,000
HUD Field Office: Oklahoma City Area Office				
Oklahoma City, OK SMSA: Canadian County Cleveland County McClain County Oklahoma County Pottawatomie County	\$68,000	\$76,500	\$93,000	\$108,000
HUD Field Office: New Orleans Area Office				
Baton Rouge and New Orleans, LA SMSAS (combined): Ascension Parish	\$76,000	\$85,500	\$103,500	\$120,500

Market area designation and local jurisdictions	Section 203(b) mortgage limits			
	1-family	2-family	3-family	4-family
East Baton Rouge Parish Jefferson Parish Livingston Parish Orleans Parish St. Bernard Parish St. Tammany Parish West Baton Rouge Parish				
HUD Field Office: Albuquerque Service Office				
Albuquerque, NM SMSA: Bernalillo County Sandoval County	\$76,500	\$86,000	\$104,000	\$121,000
HUD Field Office: Tulsa Service Office				
Tulsa, OK SMSA: Creek County Mayes County Osage County Rogers County Tulsa County Wagoner County	\$71,500	\$80,500	\$97,500	\$113,500
REGION VIII				
HUD Field Office: Denver Regional/Area Office				
Denver-Boulder, CO SMSA: Adams County Arapahoe County Boulder County Denver County Douglas County Gilpin County Jefferson County	\$76,000	\$85,500	\$103,500	\$120,500
Greeley, CO SMSA: Weld County	70,500	79,500	96,500	111,500
Colorado statewide non-SMSA areas	70,500	79,500	96,500	111,500
HUD FIELD OFFICE: HELENA SERVICE OFFICE				
State of Montana, SMSA and non-SMSA areas	\$75,500	\$84,000	\$102,500	\$118,000
REGION IX				
HUD Field Office: Los Angeles Area Office				
Los Angeles area, office metro and nonmetro areas: Los Angeles County San Luis Obispo County Santa Barbara County Ventura County	\$90,000	\$101,300	\$122,600	\$142,600
HUD Field Office: San Francisco Area Office				
San Francisco area office metro and nonmetro areas: Alameda County Contra Costa County Del Norte County Humboldt County Lake County Marin County Mendocino County Monterey County Napa County San Benito County San Francisco County San Mateo County Santa Clara County Santa Cruz County Solano County Sonoma County	\$90,000	\$101,300	\$122,600	\$142,600
HUD Field Office: Fresno Service Office				
Fresno service office metro and nonmetro areas: Fresno County Kern County Kings County Madera County Mariposa County Merced County Stanislaus County Tulare County	\$71,500	\$80,500	\$98,000	\$113,000
HUD Field Office: Sacramento Service Office				
Sacramento service office metro and nonmetro areas: Alpine County	\$84,000	\$95,000	\$115,000	\$133,500

Market area designation and local jurisdictions	Section 203(b) mortgage limits			
	1-family	2-family	3-family	4-family
Amador County				
Butte County				
Calaveras County				
Colusa County				
El Dorado County				
Glenn County				
Lassen County				
Modoc County				
Nevada County				
Placer County				
Plumas County				
Sacramento County				
San Joaquin County				
Shasta County				
Sierra County				
Siskiyou County				
Sutter County				
Tehama County				
Trinity County				
Tuolumne County				
Yolo County				
Yuba County				
HUD Field Office: San Diego Service Office				
San Diego service office metro and nonmetro areas:				
Imperial County	\$90,000	\$101,300	\$122,600	\$142,600
San Diego County				
HUD Field Office: Santa Ana Service Office				
Santa Ana service office metro areas:				
Orange County	\$90,000	\$101,300	\$122,600	\$142,600
Riverside County				
San Bernardino County				
Santa Ana service office nonmetro areas:				
Inyo County	71,500	80,500	98,000	113,000
Mono County				
HUD Field Office: Las Vegas Service Office				
Las Vegas, NV SMSA: Clark County	\$90,000	\$101,300	\$122,600	\$142,600
State of Nevada—nonmetro areas:				
Lincoln County	75,000	84,000	102,500	118,000
Nye County (part)				
HUD Field Office: Reno Service Office				
Reno, NV SMSA: Washoe County	\$89,500	\$101,000	\$122,000	\$142,000
State of Nevada—nonmetro areas:				
Carson City County	75,000	84,000	102,500	118,000
Churchill County				
Douglas County				
Elko County				
Esmeralda County				
Eureka County				
Humboldt County				
Lander County				
Lyon County				
Mineral County				
Nye County (part)				
Pershing County				
Storey County				
White Pine County				
HUD Field Office: Phoenix Service Office				
Phoenix, AZ SMSA: Maricopa County	\$81,000	\$91,500	\$111,500	\$128,500
HUD Field Office: Tucson Service Office				
Tucson, AZ SMSA: Pima County	\$68,500	\$77,000	\$94,000	\$108,000
HUD Field Office: Honolulu Area Office				
State of Hawaii metro and nonmetro areas	\$135,000	\$151,950	\$183,975	\$213,975
REGION X				
HUD Field Office: Seattle Area Office				
Richland-Kennewick and Yakima, WA SMSAS (combined): Yakima County	\$72,000	\$81,500	\$99,000	\$114,000
Seattle-Everett, WA SMSA:				
King County	72,000	81,500	99,000	114,000
Snohomish County				
Tacoma, WA SMSA: Pierce County	71,000	80,000	97,500	112,500

Market area designation and local jurisdictions	Section 203(b) mortgage limits			
	1-family	2-family	3-family	4-family
HUD Field Office: Spokane Service Office				
Richland-Kennewick and Yakima, WA SMSAS (combined):				
Benton County	\$72,000	\$81,500	\$99,000	\$114,000
Franklin County				
Spokane, WA SMSA: Spokane County	72,000	81,500	99,000	114,000
HUD Field Office: Boise Service Office				
Boise City, ID SMSA: Ada County	\$75,000	\$84,000	\$102,500	\$118,000

PART 234 [AMENDED]

4. Part 234 is amended by revising Appendix A at the end thereof to read, in its entirety, as follows:

Appendix A to Part 234**Schedule of Section 234(c) Area-Wide One-Family Mortgage Limits**

For any market area (county or part of a county) not listed in Appendix A below, the maximum mortgage limit for a one-family condominium unit insured under section 234(c) shall be: \$67,500.

Market area designation and local jurisdictions	Section 234(c) mortgage limit
REGION I.—HUD Field Office: Hartford Area Office	
Bridgeport, CT SMSA	\$70,500
Fairfield County (part)	
Bridgeport City	
Shelton City	
Easton Town	
Fairfield Town	
Monroe Town	
Stratford Town	
Trumbull Town	
New Haven County (part)	
Derby City	
Milford City	
Bristol, CT SMSA	71,000
Hartford County (part)	
Bristol City	
Burlington Town	
Litchfield County	
Plymouth Town	
Danbury, CT SMSA	74,900
Fairfield County (part)	
Danbury City	
Bethel Town	
Brookfield Town	
New Fairfield Town	
Newtown Town	
Redding Town	
Litchfield County (part)	
New Milford Town	
Hartford, CT SMSA	68,000
Hartford County (part)	
Hartford City	
Avon Town	
Bloomfield Town	
Canton Town	
East Granby Town	
East Hartford Town	
East Windsor Town	
Enfield Town	
Farmington Town	
Market area designation and local jurisdictions	
Glastonbury Town	
Granby Town	
Manchester Town	
Marlborough Town	
Newington Town	
Rocky Hill Town	
Simsbury Town	
South Windsor Town	
Suffield Town	
West Hartford Town	
Wethersfield Town	
Windsor Town	
Windsor Locks Town	
Litchfield County (part)	
New Hartford Town	
Middlesex County (part)	
Cromwell Town	
East Hampton Town	
Portland Town	
New London County	
Colchester Town	
Tolland County (part)	
Andover Town	
Bolton Town	
Columbia Town	
Coventry Town	
Ellington Town	
Hebron Town	
Stafford Town	
Tolland Town	
Vernon Town	
Willington Town	
Norwalk, CT SMSA	74,900
Fairfield County (part)	
Norwalk City	
Weston Town	
Westport Town	
Wilton Town	
Stamford, CT SMSA	74,900
Fairfield County (part)	
Stamford City	
Darien Town	
Greenwich Town	
New Canaan Town	
REGION II.—HUD Field Office: New York Area Office	
New York and Nassau-Suffolk, NY SMSAS (combined)	72,000
Bronx County	
Kings County	
Nassau County	
New York County	
Putnam County	
Queens County	
Richmond County	
Rockland County	
Suffolk County	
Westchester County	
HUD Field Office: Newark Area Office	
State of New Jersey—northern metro areas	74,900
Market area designation and local jurisdictions	
Bergen County	
Essex County	
Hudson County	
Middlesex County	
Monmouth County	
Morris County	
Passaic County	
Somerset County	
Union County	
HUD Field Office: Camden Service Office	
Atlantic City, NJ SMSA, Atlantic County	74,900
Trenton, NJ SMSA, Mercer County	68,500
REGION III.—HUD Field Office: WASHINGTON, DC AREA OFFICE	
Washington, DC—MD—VA SMSA	74,900
District of Columbia	
Montgomery County, MD	
Prince Georges County, MD	
Alexandria City, VA	
Fairfax City, VA	
Fairfax County, VA	
Falls Church City, VA	
Manassas City, VA	
Manassas Park City, VA	
Arlington County, VA	
Loudoun County, VA	
Prince William County, VA	
Washington, DC—MD—VA SMSA, Charles County, MD	74,900
Baltimore, MD SMSA (part)	74,900
Howard County	
Anne Arundel County	
HUD Field Office: Richmond Area Office	
Newport News-Hampton and Norfolk-VA Beach-Portsmouth, VA SMSA (combined)	74,900
Chesapeake City	
Hampton City	
Newport News City	
Norfolk City	
Poquoson City	
Portsmouth City	
Suffolk City	
Virginia Beach City	
Williamsburg City	
Gloucester County	
James City County	
York County	
REGION IV.—HUD Field Office: Greensboro Area Office	
Newport News-Hampton and Norfolk-VA Beach-Portsmouth, VA SMSA, Currituck County	74,900
HUD Field Office: Columbia Area Office	
Charleston-North Charleston, SC SMSA	74,900
Berkeley County	
Charleston County	
Dorchester County	
HUD Field Office: Atlanta Area Office	
Atlanta, GA SMSA	74,900
Butts County	
Cherokee County	
Clayton County	
Cobb County	
De Kalb County	
Douglas County	
Fayette County	
Forsyth County	
Fulton County	
Gwinnett County	
Henry County	
Newton County	
Paulding County	

Market area designation and local jurisdictions	Section 234(c) mortgage limit	Market area designation and local jurisdictions	Section 234(c) mortgage limit	Market area designation and local jurisdictions	Section 234(c) mortgage limit
Rockdale County Walton County		HUD Field Office: Forth Worth Service Office		Adams County Arapahoe County Boulder County Denver County Douglas County Gilpin County Jefferson County	
HUD Field Office: Birmingham Area Office		Dallas-Ft. Worth, TX SMSA.....	74,900	Greeley, CO SMSA, Weld County.....	70,500
Mobile, AL SMSA.....	74,900	Hood County Johnson County Parker County Tarrant County Wise County		Colorado Statewide non-SMSA areas.....	70,500
Baldwin County Mobile County		HUD Field Office: Houston Service Office		HUD Field Office: Helena Service Office	
Montgomery, AL SMSA.....	74,900	Houston, TX SMSA.....	69,500	State of Montana, SMSA and non-SMSA areas.....	74,900
Autauga County Elmore County Montgomery County		Brazoria County Fl. Bend County Harris County Liberty County Montgomery County Waller County		REGION IX.—HUD Field Office: Los Angeles Area Office	
HUD Field Office: Memphis Service Office		HUD Field Office: Lubbock Service Office		Los Angeles area office metro and non-metro areas.....	74,900
Memphis, TN-AR-MS SMSA.....	74,900	Amarillo, TX SMSA.....	68,500	Los Angeles County San Luis Obispo County Santa Barbara County Ventura County	
Shelby County Tipton County		Potter County Randall County		HUD Field Office: San Francisco Area Office	
HUD Field Office: Jackson Area Office		Lubbock, TX SMSA, Lubbock County.....	70,000	San Francisco area office metro and non-metro areas.....	\$74,900
Memphis, TN-AR-MS SMSA, DeSoto County.....	74,900	Midland, TX SMSA, Midland County.....	70,000	Alameda County Contra Costa County Del Norte County Humboldt County Lake County Marin County Mendocino County Monterey County Napa County San Benito County San Francisco County San Mateo County Santa Clara County Santa Cruz County Solano County Sonoma County	
HUD Field Office: Coral Gables Service Office		HUD Field Office: San Antonio Area Office		HUD Field Office: Fresno Service Office	
Miami, FL SMSA, Dade County.....	71,500	Austin and San Antonio, TX SMSAS (combined).....	69,500	Fresno service office metro and non-metro areas.....	\$71,500
West Palm Beach-Boca Raton, FL SMSA, Palm Beach County.....	73,500	Bexar County Comal County Guadalupe County Hays County Travis County Williamson County		Fresno County Kern County Kings County Madera County Mariposa County Merced County Stanislaus County Tulare County	
REGION V.—HUD Field Office: Minneapolis-St. Paul Area Office		Corpus Christi, TX SMSA.....	70,000	HUD Field Office: Sacramento Service Office	
Minneapolis-St. Paul, MN SMSA.....	74,000	Nueces County San Patricio County		Sacramento service office metro and non-metro areas.....	\$74,900
Anoka County Carver County Chisago County Dakota County Hennepin County Ramsey County Scott County Washington County Wright County		HUD Field Office: Little Rock Area Office		Alpine County Amador County Butte County Calaveras County Colusa County El Dorado County Glenn County Lassen County Modoc County Nevada County Placer County Plumas County Sacramento County San Joaquin County Shasta County Sierra County Siskiyou County Sutter County Tehama County Trinity County Tuolumne County Yolo County Yuba County	
St. Cloud, MN SMSA.....	68,500	Memphis, TN-AR-MS SMSA, Crittenden County.....	74,900	HUD Field Office: San Diego Service Office	
Benton County Sherburne County Stearns County		HUD Field Office: Oklahoma City Area Office		San Diego service office metro and non-metro areas.....	\$74,900
HUD Field Office: Milwaukee Area Office		Oklahoma City, OK SMSA.....	68,000		
Minneapolis-St. Paul, MN SMSA, St. Croix County.....	74,000	Canadian County Cleveland County McCain County Oklahoma County Pottawatomie County			
Milwaukee, WI SMSA.....	73,500	HUD Field Office: New Orleans Area Office			
Milwaukee County Ozaukee County Washington County Waukesha County		Baton Rouge and New Orleans, LA SMSAS (combined).....	74,900		
HUD Field Office: Detroit Area Office		Ascension Parish East Baton Rouge Parish Jefferson Parish Livingston Parish Orleans Parish St. Bernard Parish St. Tammany Parish West Baton Rouge Parish			
Detroit, MI SMSA.....	69,500	HUD Field Office: Albuquerque Service Office			
Lapeer County Livingston County Macomb County Oakland County St. Clair County Wayne County		Albuquerque, NM SMSA.....	74,900		
HUD Field Office: Columbus Area Office		Bernalillo County Sandoval County			
Cleveland, OH SMSA.....	70,500	HUD Field Office: Tulsa Service Office			
Cuyahoga County Geauga County Lake County Medina County		Tulsa, OK SMSA.....	71,500		
REGION VI.—HUD Field Office: Dallas Area Office		Creek County Mayes County Osage County Rogers County Tulsa County Wagoner County			
Dallas-Ft. Worth, TX SMSA.....	74,900	REGION VIII.—HUD Field Office: Denver Regional/Area Office			
Collin County Dallas County Denton County Ellis County Kaufman County Rockwall County		Denver-Boulder, CO SMSA.....	70,500		
Sherman-Denison, TX SMSA, Grayson County.....	74,900				

Market area designation and local jurisdictions	Section 234(c) mortgage limit
Imperial County San Diego County	
HUD Field Office: Santa Ana Service Office	
Santa Ana service office metro areas	\$74,900
Orange County	
Riverside County	
San Bernardino County	
Santa Ana service office metro and non-metro areas	\$71,500
Inyo County	
Mono County	
HUD Field Office: Las Vegas Service Office	
Las Vegas, NV SMSA, Clark County	\$74,900
State of Nevada—non-metro areas	\$74,900
Lincoln County	
Nye County (part)	
HUD Field Office: Reno Service Office	
Reno, NV SMSA, Washoe County	\$74,900
State of Nevada—non-metro areas	\$74,900
Carson City County	
Churchill County	
Douglas County	
Elko County	
Esmeralda County	
Eureka County	
Humboldt County	
Lander County	
Lyon County	
Mineral County	
Nye County (part)	
Pershing County	
Storey County	
White Pine County	
HUD Field Office: Phoenix Service Office	
Phoenix, AZ SMSA, Maricopa County	\$74,900
HUD Field Office: Tucson Service Office	
Tucson, AZ SMSA, Pima County	\$68,500
HUD Field Office: Honolulu Area Office	
State of Hawaii metro and non-metro areas	\$101,250
REGION X—HUD Field Office: Seattle Area Office	
Richland-Kennewick and Yakima, WA SMSAS (combined), Yakima County	\$72,000
Seattle-Everett, WA SMSA	\$72,000
King County	
Snohomish County	
Tacoma, WA SMSA, Pierce County	\$71,000
HUD Field Office: Spokane Service Office	
Richland-Kennewick and Yakima, WA SMSAS (combined)	\$72,000
Benton County	
Franklin County	
Spokane, WA SMSA, Spokane County	\$72,000
HUD Field Office: Boise Service Office	
Boise City, ID SMSA, Ada County	\$74,900

(Secs. 203(b)(2), 211, 234(c), National Housing Act (12 U.S.C. 1703(b)(2), 1709, 1715y(c))

Issued at Washington, D.C., December 30, 1981.

Philip D. Winn,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 82-286 Filed 1-6-82; 8:45 am]

BILLING CODE 4210-01-M

Register

Thursday
January 7, 1982

Part IV

Department of the Interior

Office of Surface Mining Reclamation and
Enforcement

Interim and Permanent Regulatory
Program Modifications

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 716 and 826

Interim and Permanent Regulatory Program Modifications

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: These proposed rules include special standards for mining in previously mined areas that have not been restored to the standards of the Surface Mining Control and Reclamation Act of 1977 where there is insufficient spoil available to completely backfill the high wall.

This rule proposes a resolution of the conflicts raised in the application of the Act in those situations where a new mining operation affects previously mined lands and the new mining operation will not generate sufficient spoil to completely backfill the highwall.

DATES: Comments must be received by 5:00 p.m. on January 15, 1982 at the address indicated below. Comments received after that time will not be considered. Representatives of OSM will be available to meet with interested persons upon request before the close of the comment period. A public hearing will be held on January 15, 1982 at the location given below.

ADDRESSES: Written comments must be mailed or hand delivered to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record, Room 5315, 1100 L Street, N.W., Washington, D.C. 20005.

A public hearing on the proposed rules will be held on January 15, 1982, in the Main Interior Auditorium, 18th and C Streets, N.W., Washington, D.C. Copies of all comments timely received and a summary of meetings with representatives of OSM will be prepared and made available for public review in Room 5315, Administrative Record, 1100 L Street, N.W., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Raymond E. Aufmuth, Physical Scientist, Office of Surface Mining, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone (202) 343-4022.

SUPPLEMENTARY INFORMATION:**A. Background**

Past mining activities in the steep-sloped Appalachian coal provinces have left a legacy of abandoned mined lands that were not reclaimed to the standards of the Surface Mining Control and

Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*, SMCRA). In many cases highwalls and benches remain and continue to pose a hazard to the environment. Under Title IV and Section 102 of SMCRA, the Office of Surface Mining Reclamation and Enforcement (OSM) and state regulatory authorities are directed to promote the reclamation of areas abandoned prior to the enactment of SMCRA and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or impair the beneficial use of land or water resources, or endanger the health or safety of the public. Sufficient funds will not be generated over the life of the abandoned mine reclamation fund established in Title IV to fully reclaim all of the existing abandoned mined lands. Moreover, in many cases it is possible to effect the reclamation of such lands in conjunction with new mining operations. OSM's policy is to encourage such reclamation of previously mined lands where possible.

The Commonwealth of Virginia has brought to OSM's attention an ambiguity in the application of the provisions of SMCRA which will result in unnecessary damage to the environment and discourage the reclamation of previously mined lands during new mining operations. This situation exists in relation to certain previously contour-mined areas where spoil was placed on the outslope. Because of the past practices, surface mining operations that take an additional cut along the contour may not generate sufficient spoil material to cover the entire highwall. Under such conditions, the only viable option to backfilling the mined area is either to not mine such areas, thereby leaving the reclamation responsibility to the regulatory authority under Title IV, or to create a borrow area where additional backfill material can be retrieved. This may result in disturbance of areas otherwise unaffected by the mining operation and greater overall environmental damage than leaving a portion of the highwall. It is OSM's belief that in enacting SMCRA, Congress did not intend either result.

This rule proposes a resolution of the conflicts raised in the application of the Act in those situations where a new mining operation affects previously mined lands and the new mining operation will not generate sufficient spoil to completely backfill the highwall.

B. Extent of Problem

It is difficult to accurately determine the amount of strippable reserves that are located in areas that have been previously mined. Available historical

data on mining in southwestern Virginia, for example, indicates that the area was first mined by small underground mining operations. Many of these areas were subsequently surface mined after the development of suitable equipment. Most of the coal outcrops that were not mined were either uneconomical or located in extremely inaccessible areas. A study of the mined areas in southwestern Virginia indicates that over 71,000 acres of land have been disturbed by surface effects of mining operations and that approximately 14.6 million linear feet or 2,765 miles of previously mined highwall remains. These disturbed areas encompass the great majority of the coal outcrop areas that are amenable to surface mining methods today.

A study of strippable reserves completed by the U.S. Bureau of Mines in 1971 (U.S. Department of the Interior, USBM, 1971) supplemented by mining production data compiled by the Keystone Coal Industry Manual (Keystone Coal Industry Manual, 1973 through 1979) indicates remaining strippable reserves of approximately 123 million short tons of coal in the southwestern Virginia coal field, with a cumulative production in excess of that amount from strip mines over the past ten years. These statistics indicate that the vast majority of surface coal production in southwestern Virginia over the next 10 to 20 years will have to occur in reserves that were not economical to extract in 1971. This production is expected to result primarily from the remining of previously mined areas.

The volume of borrow material required to cover the existing highwalls will, in many cases, be enormous. In a typical situation involving an existing bench on a 40 percent slope, backfilling just 1,000 feet of highwall could require as much as two million cubic feet of borrow material and could result in the disturbance of over nine acres of borrow area to reclaim less than one acre of existing bench. This problem is compounded by the topography and geology of southwestern Virginia. Because of the steep slopes and thin soil horizons, there is a short supply of accessible borrow material. Much of the material can be expected to come from the valley bottoms, where the soil is more plentiful and accessible. However, the use of valley floors for borrow materials will create conflicts with other potential land uses for those areas. Virginia has indicated to the OSM that they have already encountered several specific situations where operators have been forced to dig borrow pits to obtain

sufficient fill material to eliminate the highwall. This information has been requested from the Commonwealth of Virginia and when received will be placed in the administrative record of this rulemaking.

C. Legal Basis

Sections 515(b)(3) and 515(d)(2) of SMCRA impose on operators mining in steep slope areas an obligation to backfill to cover completely the highwall. This requirement is implemented in the initial program regulations at 30 CFR 716.2(a)(2) and in the permanent program regulations at 30 CFR 826.12(b). Congress' decision to impose this standard was based on its understanding that "[i]n virtually all cases of contour mountain mining, sufficient spoil by volume is created to return the mine site to approximate original contour. . . . The swell property of the materials removed (overburden) assures this condition with present stripping ratios." H.R. Rep. 95-218, 95th Cong., 1st Sess. at 96-97 (1977).

It is plain from the legislative history, however, that Congress did not consider the application of highwall elimination requirements to previously mined areas where operators must excavate borrow pits to comply. As Congress noted: "It should be emphasized . . . that a reasonable interpretation of H.R. 2 cannot justify the assertion that the bill requires . . . the useless act of digging a new pit to obtain fill material to achieve full restoration of the original topography." *Id.*

OSM is concerned that application of its regulations does require the "useless act of digging a new pit to obtain fill material." The economics of coal recovery today differ from those that existed during the period of congressional consideration of legislation which culminated in the enactment of SMCRA. As a result, the Nation's recoverable reserve base has expanded to include many previously mined areas. However, expending SMCRA to such existing unnatural conditions exposes latent difficulties in its application. OSM believes it has an obligation to assist the states in resolving such conflicts and to develop regulations consistent with the intentions of Congress.

The policy proposed in these regulations is consistent with the stated purposes of the SMCRA to (1) "promote the reclamation of mined areas left without adequate reclamation . . ." Section 102(h); (2) "assure that surface coal mining operations are so conducted as to protect the environment," Section 102(d); (3) "assure that the coal supply essential to the Nation's energy

requirements and to its economic and social well-being is provided and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy," Section 102(f); (4) "assist the States in developing and implementing a program to achieve the purposes of [SMCRA]," Section 102(g); and (5) insure that operators "cover completely the highwall and return the site to the approximate original contour, with material which will maintain stability following reclamation," Section 515(d) (so long as such language is strictly interpreted to apply to natural premining conditions). Given the legislative history of the provision, Congress' concern that the backfilled material maintain stability following reclamation, the changing economics of coal mining today, Congress' desire to effect the reclamation of abandoned mined lands, and the potential damage to the environment possible through a different application of SMCRA's standards, OSM believes the proposed rule herein to be a reasonable construction of the Act's provisions.

OSM solicits comments on the effects of the proposed rule to areas other than the southwestern coalfields of Virginia, specifically with respect to the extent of the circumstances under which strict application of OSM regulatory provisions will result in unnecessary or potentially severe environmental damage when remaining previously mined areas, and the desirability of effecting the reclamation of previously mined areas in conjunction with new mining operations.

D. Proposed Changes in Regulations

The current regulations at 30 CFR 716.2(b) (initial program) and 30 CFR 826.12(b) (permanent program) require complete covering of the highwall. The proposed regulations would incorporate into Parts 716 and 826 an exception from the requirement for complete elimination of the highwall in previously mined areas where the following standards are met:

1. The highwall is reclaimed to an environmentally acceptable condition and eliminated to the maximum extent practical using all reasonably available spoil;
2. The volume of all reasonably available spoil over the entire mining area is demonstrated in writing to the regulatory authority to be insufficient to achieve the approximate original contour that existed prior to any mining;
3. The operator assures maximization of recovery of the coal resource so that

the surface will not be further reaffected;

4. Backfilling meets stability, public safety, environmental protection and drainage requirements of SMCRA;

5. The operation is conducted to prevent disturbance of spoil on the outslope from previous mining unless such disturbance will not cause instability, or increase potential for damage to the environment and/or danger to public health and safety; and

6. Any remaining highwall remnant is stable.

For the purposes of these proposed regulations spoil should be deemed reasonably available if it is located at or near the permit site, is accessible and available for use and when rehandled will not cause a hazard to public safety or significant damage to the environment. OSM anticipates that the required showing that insufficient spoil is available could be demonstrated by certification of a registered professional engineer.

These proposed rules are not intended to apply where the mining is first cut, auger, second cut with sufficient reasonably available spoil to achieve AOC, or nonsteep slope operations. OSM solicits comments on whether these rules should be extended to any of these mining situations, particularly with respect to auger mining on a pre-existing bench. Such comments should address both the technical and legal justification for extending or not extending these rules.

In proposing these regulations, OSM is concerned that operators may be discouraged from mining far enough into a mountain or hillside to obtain sufficient spoil to eliminate the highwall. This could adversely impact on the explicit requirement of SMCRA to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffected the land in the future through surface coal mining can be minimized (Section 515(b)(1)). Accordingly, the proposed regulations specifically require a showing that the mining operations are designed to achieve maximum recovery of the coal resource given economic and technical constraints. OSM anticipates that this can be demonstrated through a showing of how far mining would have to proceed into the mountain before enough spoil would be available to reclaim the entire highwall and discussion of the reasons such additional mining is not technically or economically feasible. This showing would allow the regulatory authority to gauge whether the operator is maximizing recovery of the coal

resource or seeking to avoid compliance with the highwall elimination standards. OSM solicits comments on other methods in which maximization of coal recovery can be assured.

The Department of the Interior has determined that this is not a major rule and that it does not require a Regulatory Analysis under Executive Order 12291.

30 CFR 716.2(a) and 826.12(b) would establish information collection requirements which will be submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3507. The information required by 30 CFR 716.2(a) and 826.12(b) would be used by the regulatory authority to determine whether or not the performance standards of 30 CFR Parts 716 and 826 could be met. The information required by 30 CFR 716.2(a) and 826.12(b) is mandatory.

The Department of the Interior has determined that this document will not have a significant economic effect on a substantial number of small entities and therefore does not require a regulatory flexibility analysis under Pub. L. 96-354.

OSM has prepared a draft environmental assessment (EA) on this rule that reaches as interim conclusion that this rule should not significantly affect the quality of the human environment. The draft EA is on file in the OSM Administrative Records Office at the address listed in the "Addresses" section of the preamble. A final EA will be completed before issuance of the final rule. OSM may determine at a later date that this rulemaking and related rulemakings under Pub. L. 95-87 have cumulative effects on the environment. At that time, OSM will prepare any further environmental analysis required by the National Environmental Policy Act.

Dated: September 14, 1981.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

PART 716—SPECIAL PERFORMANCE STANDARDS

The regulations at 30 CFR Parts 716 and 826 are proposed to be amended as follows:

It is proposed to amend § 716.2 by revising paragraph (b) to read as follows:

§ 716.2 Steep-slope mining.

* * * * *

(b) The disturbed area shall be backfilled and graded to comply with the provisions of Section 715.14 of this chapter to return the site to the approximate original contour and completely cover the highwall; *Provided, however,* that where operations affect previously mined areas that were not reclaimed to the standards of this part and the volume of all reasonably available spoil is demonstrated in writing to the regulatory authority to be insufficient to completely backfill the highwall and achieve the approximate original contour that existed prior to any mining, the new highwall shall be eliminated to the maximum extent practical in accordance with the following criteria:

(1) In each case, the person who conducts the surface coal mining and reclamation operation must demonstrate to the regulatory authority, using standard geotechnical analysis, that the minimum static factor of safety for the stability of all portions of the backfill is at least 1.3.

(2) All spoil generated by the mining operation or other reasonably available spoil shall be used to backfill the area so as to eliminate the highwall to the maximum extent practical.

(3) The backfill shall be graded to a slope which is compatible with the postmining land use and which provides adequate drainage and long-term stability.

(4) Any remnant of the highwall shall be made stable and not pose a hazard to the public health or safety, or the environment.

(5) Spoil from previous mining operations placed on the outcrops shall not be disturbed unless such disturbance will not cause instability of the remaining spoil or increase the potential for damage to the environment and/or danger to the public health and safety.

(6) The operation shall be designed to achieve maximum recovery of the coal resource given economic and technical constraints.

* * * * *

PART 826—SPECIAL PERMANENT PERFORMANCE STANDARDS—OPERATIONS ON STEEP SLOPES

It is proposed to amend § 826.12 by revising paragraph (b) to read as follows:

§ 826.12 Steep slopes: Performance standards.

* * * * *

(b) The disturbed area shall be backfilled and graded to comply with the provisions of 30 CFR 816.101–816.106 and 30 CFR 817.101–817.106, to return the site to the approximate original contour and completely cover the highwall; *Provided, however,* that where operations affect previously mined areas that were not reclaimed to the standards of this Part and the volume of all reasonably available spoil is demonstrated in writing to the regulatory authority to be insufficient to completely backfill the highwall and achieve the approximate original contour that existed prior to any mining, the new highwall shall be eliminated to the maximum extent practical in accordance with the following criteria:

(1) In each case, the person who conducts the surface coal mining and reclamation operation must demonstrate to the regulatory authority, using standard geotechnical analysis, that the minimum static factor of safety for the stability of all portions of the backfill is at least 1.3.

(2) All spoil generated by the mining operation or other reasonably available spoil shall be used to backfill the area so as to eliminate the highwall to the maximum extent practical.

(3) The backfill shall be graded to a slope which is compatible with the postmining land use and which provides adequate drainage and long-term stability.

(4) Any remnant of the highwall shall be made stable and not pose a hazard to public health or safety, or the environment.

(5) Spoil from previous mining operations placed on the outcrops shall not be disturbed unless such disturbance will not cause instability of the remaining spoil or increase the potential for damage to the environment and/or danger to the public health and safety.

(6) The operation shall be designed to achieve maximum recovery of the coal resource given economic and technical constraints.

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January 7, 1982

Part V

Office of Management and Budget

Proposed Revision of OMB Circular A-21,
"Cost Principles for Educational
Institutions"; Opportunity to Comment

OFFICE OF MANAGEMENT AND BUDGET

Comment; Proposed Revision of OMB Circular A-21, "Cost Principles for Educational Institutions"

SUMMARY: This notice offers interested parties an opportunity to comment on a proposed revision of Circular A-21, "Cost principles for educational institutions." The revision would modify the rules dealing with the allowability of interest costs, and the reporting and recordkeeping requirements pertaining to salary costs. A revision of the definition section, describing reporting categories, is also proposed.

At the present time, Circular A-21 does not recognize interest costs. It states that costs incurred for interest on borrowed capital or temporary use of endowment funds are unallowable. In January 1981, a notice was published in the *Federal Register* inviting comments on a proposed revision which, if approved, would have recognized interest costs related to newly construction or acquired buildings. Over 100 comments were received. Most of the comments supported allowability of interest costs but recommended that it be broadened to include capital equipment and renovations. A proposal pertaining to allowability of independent research and development costs received a mixed reception, and no changes in that area are proposed here.

The proposal concerning documentation of salary costs is being made as a result of numerous expressions of concern by faculty members and university spokespersons. The proposed language is based on recommendations by the American Association of Universities and the Council of Scientific Society Presidents. It gives universities greater flexibility in documenting salary costs. It does so by doing away with the current required methods for documenting such costs—monitored workload and personnel activity reports. It replaces these methods with general principles for documentation and criteria for acceptable methods. Three examples of acceptable methods are set forth—the Plan-Confirmation Method, After-the-fact Activity Records, and Multiple Confirmation Records. In addition, the proposal would permit other methods, consistent with the general principles and criteria, to be used by agreement with the responsible Federal agency. The use of any of these methods would be expected to reduce the paperwork burden on faculty members while still

providing necessary accountability for the use of public funds.

The proposed revision would define two new major university functions—sponsored instruction and training, and university research. In arguing for inclusion of these new categories, university groups said that current definitions fail to distinguish clearly between sponsored and other activities. The proposed changes would allow institutions to make this distinction clear by permitting the separation of the categories of sponsored research, university research, and sponsored instruction and training, while making it clear that instruction and departmental research are treated as a single function in colleges and universities. University groups argued that consistent application of these definitions in the allocation of indirect costs to institutional functions and in the calculation of the distribution base used for derivation of the indirect cost rate would help to assure equitable treatment, while providing flexibility needed to accommodate the diversity of the institutions' accounting systems. We recognize that use of the new reporting categories could add to the detail now required in faculty reports. However, use of the new categories is optional, and universities not needing or wanting to use these categories would not be required to call for additional faculty reporting.

These proposed changes are in furtherance of OMB's effort to grant regulatory relief and bring about greater consistency in Federal grant regulations. The proposal is not expected to have an annual effect on the economy of \$100 million or more; therefore, it is not considered to be a major rule as defined in Executive Order 12291, "Federal Regulation."

Comments should be submitted in duplicate to: Financial Management Branch, Budget Review Division, Office of Management and Budget, Room 6002, New Executive Office Building, Washington, D.C. 20503. All comments should be received on or before March 8, 1982.

FOR FURTHER INFORMATION, CONTACT:
George Northway, 202/395-4773.

SUPPLEMENTARY INFORMATION: The proposed changes to OMB Circular A-21 are set forth in Attachment 1.
Linda L. Smith,

Assistant Director for Administration.

The proposed language is shown as follows:

B. Definition of Terms

1. Major functions of an institution refers to instruction, organized research, other

sponsored activities, and other institutional activities as defined below:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in c below, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function but as a part of the instruction function of the institution.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted by the institution under an internal application of institutional funds. University research, for purposes of this document, may be considered a part of the instruction function, or may be combined with sponsored research under the function of organized research, or may be treated as a separate major function, as agreed to with the cognizant agency.

c. d becomes c.

d. e becomes d.

J. Compensation for Personal Services

6. b. (1) General Principles:

(a) The distribution of salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with the generally accepted practices of colleges and universities. Institutions may treat all activities not directly charged to sponsored agreements, and not needed to be distributed to more than one activity for purposes of identifying indirect costs and the functions to which they are allocable, in a residual category, the components of which are not required to be separately documented.

(b) The apportionment of employees' salaries and wages which are chargeable to more than one sponsored agreement or other cost objective will be accomplished by methods which will (1) be in accordance with Sections A-2 and C above, (2) produce an equitable distribution of charges for employees' activities, and (3) distinguish the employees' direct activities from their indirect activities.

(c) In the use of any methods for apportioning salaries, it is recognized that, in an academic setting, teaching, research, service, and administration are often inextricably intermingled. A precise assessment of factors that contribute to costs is not always feasible, nor is it expected. Reliance, therefore, is placed on estimates in which a degree of tolerance is appropriate.

(d) There is no single best method for documenting the distribution of charges for personal services.

Methods for apportioning salaries and wages, however, must meet the criteria specified in J.6.b.(2) below. Examples of acceptable methods are contained in J.6.c. below. Other methods which meet the criteria specified in J.6.b.(2) below also shall be deemed acceptable, if a mutually satisfactory alternative agreement is reached.

(2) Criteria for Acceptable Methods:

(a) The payroll distribution system will (i) be incorporated into the official records of the institution, (ii) reasonably reflect the activity for which the employee is compensated by the institution, and (iii) encompass both sponsored and all other activities on an integrated basis but may include the use of subsidiary records. (Compensation for incidental work described in J.6.a. need not be included.)

(b) The method must recognize the principle of after-the-fact confirmation or determination so that costs distributed represent actual costs, unless a mutually satisfactory alternative agreement is reached.

Direct cost activities and indirect cost activities may be confirmed by responsible persons with suitable means of verification that the work was performed. Confirmation by the employee is not a requirement for either direct or indirect cost activities if other responsible persons make appropriate confirmations.

(c) The payroll distribution system will allow confirmation of activity allocable to each sponsored agreement and each of the categories of activity needed to identify indirect costs and the functions to which they are allocable. The activities chargeable to indirect cost categories or the major functions of the institution for employees whose salaries must be apportioned (see J.6.b.1.(b) above), if not initially identified as separate categories, may be subsequently distributed by any reasonable method mutually agreed to, including, but not limited to, suitably conducted surveys, statistical sampling procedures, or the application of negotiated fixed rates.

(d) Practices vary among institutions and within institutions as to the activity constituting a full workload. Therefore, the payroll distribution system may reflect categories of activities expressed as a percentage distribution of total activities.

(e) Direct and indirect charges may be made initially to sponsored agreements on the basis of estimates made before services are performed. When such estimates are used, significant changes in the corresponding work activity must be identified and entered into the payroll distribution system. Short-term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term, such as an academic period.

(f) The system will provide for independent internal evaluations to ensure the system's effectiveness and compliance with the above standards.

(g) For systems which meet these standards, the institution will not be required to provide additional support or documentation for the effort actually performed.

J. 6.c. Examples of Acceptable Methods for Payroll Distribution:

1. *Plan-Confirmation:* Under this method the distribution of salaries and wages of professorial or professional staff applicable to sponsored agreements is based on budgeted, planned, or assigned work activity, updated to reflect any significant changes in work distribution. A plan-confirmation system used for salaries and wages charged directly or indirectly to sponsored agreements will meet the following standards:

(a) A system of budgeted, planned, or assigned work activity will be incorporated into the official records of the institution and encompass both sponsored and all other activities on an integrated basis. The system may include the use of subsidiary records.

(b) The system will reasonably reflect only the activity for which the employee is compensated by the institution (compensation for incidental work described in J.6.a. need not be included). Practices vary among institutions and within institutions as to the activity constituting a full workload. Hence, the system will reflect categories of activities expressed as a percentage distribution of total activities. (But see Section H for treatment of indirect costs under the simplified method for small institutions.)

(c) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify indirect costs and the functions to which they are allocable. The system may treat indirect cost activities initially within a residual category and subsequently determine them by alternate methods as discussed in J.6.b.(2)(c).

(d) The system will provide for modification of an individual's salary or salary distribution commensurate with any significant change in the employee's work activity. Short-term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term such as an academic period. Whenever it is apparent that a significant change in work activity which is directly or indirectly charged to sponsored agreements will occur or has occurred, the change will be documented

over the signature of a responsible official and entered into the system.

(e) At least annually a statement will be signed by the employee, principal investigator, or responsible official(s) using suitable means of verification that the work was performed, stating that salaries and wages charged to sponsored agreements as direct charges, and to residual, indirect cost or other categories are reasonable in relation to work performed.

(f) The system will provide for independent internal evaluations to ensure the system's integrity and compliance with the above standards.

(g) In the use of this method, an institution shall not be required to provide additional support or documentation for the effort actually performed.

2. *After-the-fact Activity Records:* Under this system the distribution of salaries and wages by the institution will be supported by activity reports as prescribed below.

(a) Activity reports will reflect the distribution of activity expended by employees covered by the system (compensation for incidental work as described in J.6.a. need not be included).

(b) These reports will reflect an after-the-fact reporting of the percentage distribution of activity of employees. Charges may be made initially on the basis of estimates made before the services are performed, provided that such charges are promptly adjusted if significant differences are indicated by activity records.

(c) Reports will reasonably reflect the activities for which employees are compensated by the institution. To confirm that the distribution of activity represents a reasonable estimate of the work performed by the employee during the period, the reports will be signed by the employee, principal investigator, or responsible official(s) using suitable means of verification that the work was performed.

(d) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify indirect costs and the functions to which they are allocable. The system may treat indirect cost activities initially within a residual category and subsequently determine them by alternate methods as discussed in J.6.b.(2)(c).

(e) For professorial and professional staff, the reports will be prepared each academic term, but no less frequently than every six months. For other employees, unless alternate arrangements are agreed to, the reports will be prepared no less frequently than monthly and will coincide with one or more pay periods.

(f) Where the institution uses time cards or other forms of after-the-fact payroll documents as original documentation for payroll and payroll charges, such documents shall qualify as records for this purpose provided that they meet the requirements in (a) through (e) above.

3. *Multiple Confirmation Records:* Under this system the distribution of salaries and wages of professorial and professional staff will be supported by records which certify separately for direct and indirect cost activities as prescribed below.

(a) For employees covered by the system there will be direct cost records to reflect the distribution of that activity expended which is to be allocable as direct cost to each sponsored agreement. There will also be indirect cost records to reflect the distribution of that activity to indirect costs. These records may be kept jointly or separately (but are to be certified separately, see below).

(b) Salary and wage charges may be made initially on the basis of estimates made before the services are performed provided that such charges are promptly adjusted if significant differences occur.

(c) Institutional records will reasonably reflect only the activity for which employees are compensated by the institution (compensation for incidental work as described in J.6.a. need not be included).

(d) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify indirect costs and the functions to which they are allocable.

(e) To confirm that the distribution of activity represents a reasonable estimate of the work performed by the employee during the period, the record for each employee will include:

(1) The signature of the employee or of a person having direct knowledge of the work, confirming that the record of activities allocable as direct costs of each sponsored agreement is appropriate.

(2) The record of indirect costs will include the signature of responsible person(s) who use suitable means of verification that the

work was performed and is consistent with the overall distribution of the employee's compensated activities.

These signatures may all be on the same document.

(f) The reports will be prepared each academic term, but no less frequently than every six months.

(g) Where the institution uses time cards or other forms of after-the-fact payroll documents as original documentation for payroll and payroll charges, such documents shall qualify as records for this purpose provided they meet the requirements in (a) through (f) above.

Related Changes

Change F.4.a.(2)(a) (in Departmental Administration Expenses), sentence 2, to read:

Salaries of professorial and professional staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to departmental administration is determined in accordance with Section J.6.

Change F.5.a. (in Sponsored Projects Administration), Sentence 3, to read:

The salaries of professorial and professional staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to sponsored agreements administration is determined in accordance with Section J.6.

Change F.7.a. (in Student Administration and Services), sentence 2, to read:

The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to Student Administration is determined in accordance with Section J.6.

Delete J.6.c. *Monitored Workload*.

Delete J.6.d. *Personnel Activity Reports*.

Relabel J.6.e. as J.6.d.

Relabel J.6.f. as J.6.e.

Paragraph J.17.

Add at the end of section a., "except as indicated in e. below."

Add new section e., as follows:

"e. The cost of interest directly associated with buildings acquired on or after July 1, 1982, and major reconstruction and remodeling of existing buildings completed on or after July 1, 1982, and used in support of sponsored agreements, is allowable. However, the total cost of the buildings (including depreciation or use allowance, operation and maintenance costs, interest, etc.) may not exceed the rental cost of comparable facilities in the same locality. The cost of interest directly associated with the acquisition or fabrication of capital equipment acquired on or after July 1, 1982, used in support of sponsored agreements and costing \$25,000 or more for initial acquisition, is allowable if agreed to by the cognizant agency."

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